

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS

No. 6:24-cv-00029

**Jody McCreary,**  
*Plaintiff,*

v.

**Kerry L. Russell et al.,**  
*Defendants.*

**ORDER**

Plaintiff Jody McCreary, an inmate of the Smith County Jail proceeding pro se, filed this civil rights lawsuit pursuant to 42 U.S.C. § 1983 without paying the filing fee. The case was referred to United States Magistrate Judge John D. Love pursuant to 28 U.S.C. § 636(b). Doc. 2.


On January 29, 2024, the magistrate judge issued a report recommending that plaintiff be denied leave to proceed as a pauper as barred by 28 U.S.C. § 1915(g) and that the complaint be dismissed without prejudice as barred by the sanctions imposed by the United States Court of Appeals for the Fifth Circuit in *In re Jody Ford McCreary*, No. 22-90025 (5th Cir. Oct. 11, 2022). Doc. 3. Plaintiff has filed written objections. Doc. 4.

The court reviews the objected-to portions of a magistrate judge's report and recommendation de novo. *See* Fed. R. Civ. P. 72(b)(3); 28 U.S.C. § 636(b)(1). Plaintiff argues that the Fifth Circuit's ruling in *In re Jody Ford McCreary* only barred future habeas challenges to his previous criminal judgment and that the ruling would not apply to his current § 1983 lawsuit. Doc. 4. The court disagrees. The clear language of the Fifth Circuit's order bars plaintiff from filing any pleadings in this jurisdiction until his sanctions have been paid or he first obtains leave of the court. Order on Motion for Permission to Proceed after Sanction at 2, *In re Jody Ford McCreary*, No. 22-90025 (5th Cir. Oct. 11, 2022). And while plaintiff asserts that he has previously paid a sanction imposed by the Fifth Circuit,

the court has confirmed by consulting the Fifth Circuit's docket for the above-quoted case and inquiry to the Fifth Circuit's clerk's office that the sanction imposed has not been satisfied.

Having reviewed the magistrate judge's report de novo, and being satisfied that it contains no error, the court overrules plaintiff's objections and accepts the report's findings and recommendation. This case is dismissed without prejudice as barred by the sanctions imposed by the Fifth Circuit.

*So ordered by the court on February 23, 2024.*

  
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J. CAMPBELL BARKER  
United States District Judge